



Sen. Kimberly A. Lightford

**Filed: 6/7/2007**

09500SB0866sam002

LRB095 05613 DRJ 37574 a

1 AMENDMENT TO SENATE BILL 866

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 866, AS AMENDED, by  
3 inserting the following between the enacting clause and the  
4 introductory clause of Section 5:

5 "Section 2. The Illinois Act on the Aging is amended by  
6 changing Sections 4.03 and 4.04 as follows:

7 (20 ILCS 105/4.03) (from Ch. 23, par. 6104.03)

8 Sec. 4.03. The Department on Aging, in cooperation with the  
9 Department of Human Services and any other appropriate State,  
10 local or federal agency, shall, without regard to income  
11 guidelines, establish a nursing home prescreening program to  
12 determine whether Alzheimer's Disease and related disorders  
13 victims, and persons who are deemed as blind or disabled as  
14 defined by the Social Security Act and who are in need of long  
15 term care, may be satisfactorily cared for in their homes  
16 through the use of home and community based services. Case

1 coordination units under contract with the Department may  
2 charge a fee for the prescreening provided under this Section  
3 and the fee shall be no greater than the cost of such services  
4 to the case coordination unit. At the time of each  
5 prescreening, case coordination units shall provide  
6 information regarding the Office of State Long Term Care  
7 Ombudsman's Residents Right to Know database as authorized in  
8 subsection (c-5) of Section 4.04.

9 (Source: P.A. 89-21, eff. 7-1-95; 89-507, eff. 7-1-97.)

10 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

11 Sec. 4.04. Long Term Care Ombudsman Program.

12 (a) Long Term Care Ombudsman Program. The Department shall  
13 establish a Long Term Care Ombudsman Program, through the  
14 Office of State Long Term Care Ombudsman ("the Office"), in  
15 accordance with the provisions of the Older Americans Act of  
16 1965, as now or hereafter amended.

17 (b) Definitions. As used in this Section, unless the  
18 context requires otherwise:

19 (1) "Access" has the same meaning as in Section 1-104  
20 of the Nursing Home Care Act, as now or hereafter amended;  
21 that is, it means the right to:

22 (i) Enter any long term care facility or assisted  
23 living or shared housing establishment or supportive  
24 living facility;

25 (ii) Communicate privately and without restriction

1 with any resident who consents to the communication;

2 (iii) Seek consent to communicate privately and  
3 without restriction with any resident;

4 (iv) Inspect the clinical and other records of a  
5 resident with the express written consent of the  
6 resident;

7 (v) Observe all areas of the long term care  
8 facility or supportive living facilities, assisted  
9 living or shared housing establishment except the  
10 living area of any resident who protests the  
11 observation.

12 (2) "Long Term Care Facility" means (i) any facility as  
13 defined by Section 1-113 of the Nursing Home Care Act, as  
14 now or hereafter amended; and (ii) any skilled nursing  
15 facility or a nursing facility which meets the requirements  
16 of Section 1819(a), (b), (c), and (d) or Section 1919(a),  
17 (b), (c), and (d) of the Social Security Act, as now or  
18 hereafter amended (42 U.S.C. 1395i-3(a), (b), (c), and (d)  
19 and 42 U.S.C. 1396r(a), (b), (c), and (d)).

20 (2.5) "Assisted living establishment" and "shared  
21 housing establishment" have the meanings given those terms  
22 in Section 10 of the Assisted Living and Shared Housing  
23 Act.

24 (2.7) "Supportive living facility" means a facility  
25 established under Section 5-5.01a of the Illinois Public  
26 Aid Code.

1           (3) "State Long Term Care Ombudsman" means any person  
2 employed by the Department to fulfill the requirements of  
3 the Office of State Long Term Care Ombudsman as required  
4 under the Older Americans Act of 1965, as now or hereafter  
5 amended, and Departmental policy.

6           (3.1) "Ombudsman" means any designated representative  
7 of a regional long term care ombudsman program; provided  
8 that the representative, whether he is paid for or  
9 volunteers his ombudsman services, shall be qualified and  
10 designated by the Office to perform the duties of an  
11 ombudsman as specified by the Department in rules and in  
12 accordance with the provisions of the Older Americans Act  
13 of 1965, as now or hereafter amended.

14           (c) Ombudsman; rules. The Office of State Long Term Care  
15 Ombudsman shall be composed of at least one full-time ombudsman  
16 and shall include a system of designated regional long term  
17 care ombudsman programs. Each regional program shall be  
18 designated by the State Long Term Care Ombudsman as a  
19 subdivision of the Office and any representative of a regional  
20 program shall be treated as a representative of the Office.

21           The Department, in consultation with the Office, shall  
22 promulgate administrative rules in accordance with the  
23 provisions of the Older Americans Act of 1965, as now or  
24 hereafter amended, to establish the responsibilities of the  
25 Department and the Office of State Long Term Care Ombudsman and  
26 the designated regional Ombudsman programs. The administrative

1 rules shall include the responsibility of the Office and  
2 designated regional programs to investigate and resolve  
3 complaints made by or on behalf of residents of long term care  
4 facilities, supportive living facilities, and assisted living  
5 and shared housing establishments relating to actions,  
6 inaction, or decisions of providers, or their representatives,  
7 of long term care facilities, of supported living facilities,  
8 of assisted living and shared housing establishments, of public  
9 agencies, or of social services agencies, which may adversely  
10 affect the health, safety, welfare, or rights of such  
11 residents. When necessary and appropriate, representatives of  
12 the Office shall refer complaints to the appropriate regulatory  
13 State agency. The Department, in consultation with the Office,  
14 shall cooperate with the Department of Human Services in  
15 providing information and training to designated regional long  
16 term care ombudsman programs about the appropriate assessment  
17 and treatment (including information about appropriate  
18 supportive services, treatment options, and assessment of  
19 rehabilitation potential) of persons with mental illness  
20 (other than Alzheimer's disease and related disorders).

21 The State Long Term Care Ombudsman and all other ombudsmen,  
22 as defined in paragraph (3.1) of subsection (b) must submit to  
23 background checks under the Health Care Worker Background Check  
24 Act and receive training, as prescribed by the Illinois  
25 Department on Aging, before visiting facilities. The training  
26 must include information specific to assisted living

1 establishments, supportive living facilities, and shared  
2 housing establishments and to the rights of residents  
3 guaranteed under the corresponding Acts and administrative  
4 rules.

5 (c-5) Consumer Choice Information Reports. The Office  
6 shall:

7 (1) In collaboration with the Attorney General, create  
8 a Consumer Choice Information Report form to be completed  
9 by all licensed long term care facilities and assisted  
10 living or shared housing establishments to aid Illinoisans  
11 and their families in making informed choices about long  
12 term care. The Office shall create a Consumer Choice  
13 Information Report for each type of licensed long term care  
14 facility and assisted living or shared housing  
15 establishment.

16 (2) Develop a database of Consumer Choice Information  
17 Reports completed by licensed long term care facilities and  
18 assisted living or shared housing establishments that  
19 includes information in the following consumer categories:

20 (A) Medical Care, Services, and Treatment.

21 (B) Special Services and Amenities.

22 (C) Staffing.

23 (D) Facility Statistics and Resident Demographics.

24 (E) Ownership and Administration.

25 (F) Safety and Security.

26 (G) Meals and Nutrition.

1                   (H) Rooms, Furnishings, and Equipment.

2                   (I) Family, Volunteer, and Visitation Provisions.

3                   (3) Make this information accessible to the public,  
4 including on the Internet by means of a hyperlink labeled  
5 "Resident's Right to Know" on the Office's World Wide Web  
6 home page.

7                   (4) Have the authority, with the Attorney General, to  
8 verify that information provided by a facility or  
9 establishment is accurate.

10                   (5) Request a new report from any licensed facility or  
11 establishment whenever it deems necessary.

12                   (d) Access and visitation rights.

13                   (1) In accordance with subparagraphs (A) and (E) of  
14 paragraph (3) of subsection (c) of Section 1819 and  
15 subparagraphs (A) and (E) of paragraph (3) of subsection  
16 (c) of Section 1919 of the Social Security Act, as now or  
17 hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and  
18 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the  
19 Older Americans Act of 1965, as now or hereafter amended  
20 (42 U.S.C. 3058f), a long term care facility, supportive  
21 living facility, assisted living establishment, and shared  
22 housing establishment must:

23                   (i) permit immediate access to any resident by a  
24 designated ombudsman; and

25                   (ii) permit representatives of the Office, with  
26 the permission of the resident's legal representative

1 or legal guardian, to examine a resident's clinical and  
2 other records, and if a resident is unable to consent  
3 to such review, and has no legal guardian, permit  
4 representatives of the Office appropriate access, as  
5 defined by the Department, in consultation with the  
6 Office, in administrative rules, to the resident's  
7 records.

8 (2) Each long term care facility, supportive living  
9 facility, assisted living establishment, and shared  
10 housing establishment shall display, in multiple,  
11 conspicuous public places within the facility accessible  
12 to both visitors and residents and in an easily readable  
13 format, the address and phone number of the Office of the  
14 Long Term Care Ombudsman, in a manner prescribed by the  
15 Office.

16 (e) Immunity. An ombudsman or any representative of the  
17 Office participating in the good faith performance of his or  
18 her official duties shall have immunity from any liability  
19 (civil, criminal or otherwise) in any proceedings (civil,  
20 criminal or otherwise) brought as a consequence of the  
21 performance of his official duties.

22 (f) Business offenses.

23 (1) No person shall:

24 (i) Intentionally prevent, interfere with, or  
25 attempt to impede in any way any representative of the  
26 Office in the performance of his official duties under



1           this Act and the Older Americans Act of 1965; or

2           (ii) Intentionally retaliate, discriminate  
3           against, or effect reprisals against any long term care  
4           facility resident or employee for contacting or  
5           providing information to any representative of the  
6           Office.

7           (2) A violation of this Section is a business offense,  
8           punishable by a fine not to exceed \$501.

9           (3) The Director of Aging, in consultation with the  
10          Office, shall notify the State's Attorney of the county in  
11          which the long term care facility, supportive living  
12          facility, or assisted living or shared housing  
13          establishment is located, or the Attorney General, of any  
14          violations of this Section.

15          (g) Confidentiality of records and identities. The  
16          Department shall establish procedures for the disclosure by the  
17          State Ombudsman or the regional ombudsmen entities of files  
18          maintained by the program. The procedures shall provide that  
19          the files and records may be disclosed only at the discretion  
20          of the State Long Term Care Ombudsman or the person designated  
21          by the State Ombudsman to disclose the files and records, and  
22          the procedures shall prohibit the disclosure of the identity of  
23          any complainant, resident, witness, or employee of a long term  
24          care provider unless:

25                 (1) the complainant, resident, witness, or employee of  
26                 a long term care provider or his or her legal

1 representative consents to the disclosure and the consent  
2 is in writing;

3 (2) the complainant, resident, witness, or employee of  
4 a long term care provider gives consent orally; and the  
5 consent is documented contemporaneously in writing in  
6 accordance with such requirements as the Department shall  
7 establish; or

8 (3) the disclosure is required by court order.

9 (h) Legal representation. The Attorney General shall  
10 provide legal representation to any representative of the  
11 Office against whom suit or other legal action is brought in  
12 connection with the performance of the representative's  
13 official duties, in accordance with the State Employee  
14 Indemnification Act.

15 (i) Treatment by prayer and spiritual means. Nothing in  
16 this Act shall be construed to authorize or require the medical  
17 supervision, regulation or control of remedial care or  
18 treatment of any resident in a long term care facility operated  
19 exclusively by and for members or adherents of any church or  
20 religious denomination the tenets and practices of which  
21 include reliance solely upon spiritual means through prayer for  
22 healing.

23 (Source: P.A. 93-241, eff. 7-22-03; 93-878, eff. 1-1-05.)

24 Section 3. The Assisted Living and Shared Housing Act is  
25 amended by adding Section 117 as follows:

1 (210 ILCS 9/117 new)

2 Sec. 117. Consumer Choice Information Reports.

3 (a) Every establishment shall complete a Consumer Choice  
4 Information Report and shall file it with the Office of State  
5 Long Term Care Ombudsman electronically as prescribed by the  
6 Office. The Report shall be filed annually and upon request of  
7 the Office of State Long Term Care Ombudsman. The Consumer  
8 Choice Information Report must be completed by the  
9 establishment in full.

10 (b) A violation of any of the provisions of this Section  
11 constitutes an unlawful practice under the Consumer Fraud and  
12 Deceptive Business Practices Act. All remedies, penalties, and  
13 authority granted to the Attorney General by the Consumer Fraud  
14 and Deceptive Business Practices Act shall be available to him  
15 or her for the enforcement of this Section.

16 (c) The Department of Public Health shall include  
17 verification of the submission of an establishment's current  
18 Consumer Choice Information Report when conducting annual  
19 on-site visit under Section 110.

20 (d) Assisted living and shared housing establishments are  
21 subject to this Section beginning 6 months after the effective  
22 date of this amendatory Act of the 95th General Assembly.

23 Section 4. The Nursing Home Care Act is amended by changing  
24 Sections 3-210 and 3-212 and by adding Section 2-214 as

1 follows:

2 (210 ILCS 45/2-214 new)

3 Sec. 2-214. Consumer Choice Information Reports.

4 (a) Every facility shall complete a Consumer Choice  
5 Information Report and shall file it with the Office of State  
6 Long Term Care Ombudsman electronically as prescribed by the  
7 Office. The Report shall be filed annually and upon request of  
8 the Office of State Long Term Care Ombudsman. The Consumer  
9 Choice Information Report must be completed by the facility in  
10 full.

11 (b) A violation of any of the provisions of this Section  
12 constitutes an unlawful practice under the Consumer Fraud and  
13 Deceptive Business Practices Act. All remedies, penalties, and  
14 authority granted to the Attorney General by the Consumer Fraud  
15 and Deceptive Business Practices Act shall be available to him  
16 or her for the enforcement of this Section.

17 (c) The Department of Public Health shall include  
18 verification of the submission of a facility's current Consumer  
19 Choice Information Report when conducting an inspection  
20 pursuant to Section 3-212.

21 (210 ILCS 45/3-210) (from Ch. 111 1/2, par. 4153-210)

22 Sec. 3-210. A facility shall retain the following for  
23 public inspection:

24 (1) A complete copy of every inspection report of the

1 facility received from the Department during the past 5 years;

2 (2) A copy of every order pertaining to the facility issued  
3 by the Department or a court during the past 5 years;

4 (3) A description of the services provided by the facility  
5 and the rates charged for those services and items for which a  
6 resident may be separately charged;

7 (4) A copy of the statement of ownership required by  
8 Section 3-207;

9 (5) A record of personnel employed or retained by the  
10 facility who are licensed, certified or registered by the  
11 Department of Professional Regulation; and

12 (6) A complete copy of the most recent inspection report of  
13 the facility received from the Department.

14 (7) A copy of the current Consumer Choice Information  
15 Report required by Section 2-214.

16 (Source: P.A. 85-1209)

17 (210 ILCS 45/3-212) (from Ch. 111 1/2, par. 4153-212)

18 Sec. 3-212. Inspection.

19 (a) The Department, whenever it deems necessary in  
20 accordance with subsection (b), shall inspect, survey and  
21 evaluate every facility to determine compliance with  
22 applicable licensure requirements and standards. Submission of  
23 a facility's current Consumer Choice Information Report  
24 required by Section 2-214 shall be verified at time of  
25 inspection. An inspection should occur within 120 days prior to

1 license renewal. The Department may periodically visit a  
2 facility for the purpose of consultation. An inspection,  
3 survey, or evaluation, other than an inspection of financial  
4 records, shall be conducted without prior notice to the  
5 facility. A visit for the sole purpose of consultation may be  
6 announced. The Department shall provide training to surveyors  
7 about the appropriate assessment, care planning, and care of  
8 persons with mental illness (other than Alzheimer's disease or  
9 related disorders) to enable its surveyors to determine whether  
10 a facility is complying with State and federal requirements  
11 about the assessment, care planning, and care of those persons.

12 (a-1) An employee of a State or unit of local government  
13 agency charged with inspecting, surveying, and evaluating  
14 facilities who directly or indirectly gives prior notice of an  
15 inspection, survey, or evaluation, other than an inspection of  
16 financial records, to a facility or to an employee of a  
17 facility is guilty of a Class A misdemeanor.

18 An inspector or an employee of the Department who  
19 intentionally prenotifies a facility, orally or in writing, of  
20 a pending complaint investigation or inspection shall be guilty  
21 of a Class A misdemeanor. Superiors of persons who have  
22 prenotified a facility shall be subject to the same penalties,  
23 if they have knowingly allowed the prenotification. A person  
24 found guilty of prenotifying a facility shall be subject to  
25 disciplinary action by his or her employer.

26 If the Department has a good faith belief, based upon

1 information that comes to its attention, that a violation of  
2 this subsection has occurred, it must file a complaint with the  
3 Attorney General or the State's Attorney in the county where  
4 the violation took place within 30 days after discovery of the  
5 information.

6 (a-2) An employee of a State or unit of local government  
7 agency charged with inspecting, surveying, or evaluating  
8 facilities who willfully profits from violating the  
9 confidentiality of the inspection, survey, or evaluation  
10 process shall be guilty of a Class 4 felony and that conduct  
11 shall be deemed unprofessional conduct that may subject a  
12 person to loss of his or her professional license. An action to  
13 prosecute a person for violating this subsection (a-2) may be  
14 brought by either the Attorney General or the State's Attorney  
15 in the county where the violation took place.

16 (b) In determining whether to make more than the required  
17 number of unannounced inspections, surveys and evaluations of a  
18 facility the Department shall consider one or more of the  
19 following: previous inspection reports; the facility's history  
20 of compliance with standards, rules and regulations  
21 promulgated under this Act and correction of violations,  
22 penalties or other enforcement actions; the number and severity  
23 of complaints received about the facility; any allegations of  
24 resident abuse or neglect; weather conditions; health  
25 emergencies; other reasonable belief that deficiencies exist.

26 (b-1) The Department shall not be required to determine

1 whether a facility certified to participate in the Medicare  
2 program under Title XVIII of the Social Security Act, or the  
3 Medicaid program under Title XIX of the Social Security Act,  
4 and which the Department determines by inspection under this  
5 Section or under Section 3-702 of this Act to be in compliance  
6 with the certification requirements of Title XVIII or XIX, is  
7 in compliance with any requirement of this Act that is less  
8 stringent than or duplicates a federal certification  
9 requirement. In accordance with subsection (a) of this Section  
10 or subsection (d) of Section 3-702, the Department shall  
11 determine whether a certified facility is in compliance with  
12 requirements of this Act that exceed federal certification  
13 requirements. If a certified facility is found to be out of  
14 compliance with federal certification requirements, the  
15 results of an inspection conducted pursuant to Title XVIII or  
16 XIX of the Social Security Act may be used as the basis for  
17 enforcement remedies authorized and commenced under this Act.  
18 Enforcement of this Act against a certified facility shall be  
19 commenced pursuant to the requirements of this Act, unless  
20 enforcement remedies sought pursuant to Title XVIII or XIX of  
21 the Social Security Act exceed those authorized by this Act. As  
22 used in this subsection, "enforcement remedy" means a sanction  
23 for violating a federal certification requirement or this Act.

24 (c) Upon completion of each inspection, survey and  
25 evaluation, the appropriate Department personnel who conducted  
26 the inspection, survey or evaluation shall submit a copy of



1 their report to the licensee upon exiting the facility, and  
2 shall submit the actual report to the appropriate regional  
3 office of the Department. Such report and any recommendations  
4 for action by the Department under this Act shall be  
5 transmitted to the appropriate offices of the associate  
6 director of the Department, together with related comments or  
7 documentation provided by the licensee which may refute  
8 findings in the report, which explain extenuating  
9 circumstances that the facility could not reasonably have  
10 prevented, or which indicate methods and timetables for  
11 correction of deficiencies described in the report. Without  
12 affecting the application of subsection (a) of Section 3-303,  
13 any documentation or comments of the licensee shall be provided  
14 within 10 days of receipt of the copy of the report. Such  
15 report shall recommend to the Director appropriate action under  
16 this Act with respect to findings against a facility. The  
17 Director shall then determine whether the report's findings  
18 constitute a violation or violations of which the facility must  
19 be given notice. Such determination shall be based upon the  
20 severity of the finding, the danger posed to resident health  
21 and safety, the comments and documentation provided by the  
22 facility, the diligence and efforts to correct deficiencies,  
23 correction of the reported deficiencies, the frequency and  
24 duration of similar findings in previous reports and the  
25 facility's general inspection history. Violations shall be  
26 determined under this subsection no later than 60 days after

1 completion of each inspection, survey and evaluation.

2 (d) The Department shall maintain all inspection, survey  
3 and evaluation reports for at least 5 years in a manner  
4 accessible to and understandable by the public.

5 (Source: P.A. 91-799, eff. 6-13-00; 92-209, eff. 1-1-02.)"; and

6 after the last line of Section 10, by inserting the following:

7 "Section 15. The Consumer Fraud and Deceptive Business  
8 Practices Act is amended by adding Section 2ZZ as follows:

9 (815 ILCS 505/2ZZ new)

10 Sec. 2ZZ. Long term care facility or assisted living or  
11 shared housing establishment; Consumer Choice Information  
12 Report. A long term care facility that fails to comply with  
13 Section 2-214 of the Nursing Home Care Act, or an assisted  
14 living or shared housing establishment that fails to comply  
15 with Section 117 of the Assisted Living and Shared Housing Act,  
16 commits an unlawful practice within the meaning of this Act."